

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 766

BY SENATORS RUCKER AND AZINGER

[Introduced February 13, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-7-6 and §3-7-7 of the Code of West Virginia, 1931, as amended,
 2 all relating to the contests of county, district, and municipal elections; establishing
 3 jurisdiction for said election contests with the circuit courts; setting forth procedures for
 4 election contests; establishing three-judge circuit courts as initial tribunals for hearing
 5 election contest proceedings; providing for appeals of such proceedings to the Supreme
 6 Court of Appeals; and establishing the authority of the Supreme Court of Appeals to
 7 establish rules and procedures for the conduct of county, district, and municipal election
 8 contest proceedings before the courts of the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-6. County, and district, and municipal contests; notices; time.

1 (a) In all cases of contested elections, the ~~county commission~~ circuit court shall be the
 2 judge of the election, qualifications and returns ~~of their own members and of all county, and~~
 3 ~~district, and municipal officers. *Provided,* That a member of the county commission whose election~~
 4 ~~is being contested may not participate in judging the election, qualifications and returns~~

5 (b) A person intending to contest the election of another to any county, ~~or~~ district, or
 6 municipal office, including ~~judge of any court or any office that shall hereafter be created to be~~
 7 filled by the voters of the county, municipality, or of any magisterial or other district therein, shall,
 8 within ~~ten~~ seven business days after the result of the election is certified, give the contestee and
 9 the circuit court notice in writing of such intention and a list of the votes he or she will dispute, with
 10 the objections to each, and of the votes rejected for which he or she will contend. If the contestant
 11 objects to the legality of the election or the qualification of the person returned as elected, the
 12 notice shall set forth the facts on which such objection is founded. The person whose election is
 13 so contested shall, within ~~ten~~ seven business days after receiving such notice, deliver to the
 14 contestant and the circuit court a like list of the votes he or she will dispute, with the objections to
 15 each, and of the rejected votes for which he or she will contend; and, if he or she has any objection

16 to the qualification of the contestant, he or she shall specify in writing the facts on which the
 17 objection is founded. Each party shall append to his or her notice an affidavit that ~~he~~ the party
 18 verily believes the matters and things set forth to be true. If new facts be discovered by either
 19 party after he or she has given notice as aforesaid, he or she may, within ~~ten~~ three days after
 20 such discovery, give an additional notice to his the party's adversary and the circuit court, with
 21 the specifications and affidavit prescribed in this section.

22 ~~The provisions of this section apply to all elections, including municipal elections, except~~
 23 ~~that the governing body of the municipality is the judge of any contest of a municipal election~~

**~~§3-7-7. County court to hear county~~ County, and district, and municipal contests;
 procedure; review.**

1 (a) The county circuit court shall hear and decide election contests initiated pursuant to
 2 the provisions of the preceding section. Upon receipt of the notice of election contest by the
 3 contestant, the clerk of the circuit court shall immediately forward a copy thereof to the chief justice
 4 of the Supreme Court of Appeals.

5 (b) Upon receipt of said notice, the chief justice of the Supreme Court of Appeals shall,
 6 not fewer than ten days from the date of the receipt of the notice, designate and appoint three
 7 circuit judges within the state, not more than one of whom shall be from the same circuit in which
 8 the notice was filed and, in the order of such appointment, shall require that the three-judge court
 9 designate the date, time and place for the hearing of the contest forthwith. The proceedings shall
 10 take precedence over all other business of the court or of any of the judges and shall be heard
 11 and determined as soon as possible.

12 (c) Subpoenas for witnesses for either party shall be issued by the clerk of the county
 13 circuit court, and served as in other cases, and the witnesses shall be entitled to the same
 14 allowances and privileges, and be subject to the same penalties, as witnesses attending a circuit
 15 court in a civil suit. The notice of contest shall be presented to the county court at its first term
 16 after the same is delivered to the person whose election is contested, and the same shall be

17 ~~docketed for trial in such court~~ At the trial of such contest, the court shall hear all such legal and
18 proper evidence that may be brought before it by either party, and may, if deemed necessary,
19 require the production of the poll books, certificates and ballots deposited with ~~its~~ the county clerk
20 or municipal recorder, and examine the same. The hearing may be continued by the court from
21 time to time, if it be shown that justice and right require it, but not beyond ~~three months from the~~
22 ~~day of election~~ the amount of time absolutely necessary. At the final trial of such contest the court
23 shall declare the true result of such election, and cause the same to be entered on the records of
24 the court. When the result of the election is declared, as aforesaid, a certified copy of the order
25 declaring such result shall, if required, be delivered by the clerk of the court to the person declared
26 elected, if such be the result of the trial, and such copy shall be received in all courts and places
27 as legal evidence of the result of the election therein declared. ~~Either the contestant or contestee~~
28 ~~shall have the right of appeal to the circuit court of the county from the final order or decision of~~
29 ~~the county court in such proceeding, upon the filing of a bond with good personal security, by the~~
30 ~~party desiring the appeal, to be approved by the county court, in a sum deemed sufficient by such~~
31 ~~court, with condition to the effect that the person proposing to appeal will perform and satisfy any~~
32 ~~judgment which may be rendered against him or her by the circuit court on such appeal. But such~~
33 ~~appeal shall not be granted unless the party desiring the appeal shall make application for such~~
34 ~~appeal, and file such bond, within thirty days from the entering of the final order in such~~
35 ~~proceeding; and the circuit court may at any time require a new bond or increase the penalty~~
36 ~~thereof when the court deems it necessary. When such appeal is taken to the circuit court, as~~
37 ~~hereinbefore provided, it shall be heard and determined upon the original papers, evidence,~~
38 ~~depositions and records filed before and considered by the county court, and the circuit court shall~~
39 ~~decide the contest upon the merits~~

40 (d) From the decision of the circuit court, an appeal shall lie to the Supreme Court of
41 Appeals, as in other cases, but such appeal shall be heard upon the original papers and copies
42 of all orders made, without requiring the same to be printed. The proceedings shall take

43 precedence over all other business of the court and shall be heard and determined as soon as
44 possible.

45 (e) If any election contest proceeding shall continue past the date for the beginning of the
46 term of the office being contested, the three-judge circuit court shall, by order, provide for the
47 temporary administration of said office until the election contest shall be finally disposed of.

48 (f) The Supreme Court of Appeals, through its rulemaking power contained in §51-1-4 of
49 this code, shall make and promulgate rules and regulations, not inconsistent with law, governing
50 pleading, practice, and procedure for the conduct of county, district, and municipal election
51 contests in the courts of this state.

NOTE: The purpose of this bill is to transfer initial jurisdiction of county, district, and municipal contested elections from the county commission or municipal council to the circuit court composed of three circuit judges appointed by the chief justice of the Supreme Court of Appeals. The bill shortens the times allowed for the various filings in election contest cases in order that they can be disposed of more quickly. The bill allows for appeals of election contests to proceed to the Supreme Court of Appeals, and also allows the Supreme Court of Appeals to make rules and regulations governing election contest proceedings before the courts of the state.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.